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Financial Intermediaries Association of Southern Africa comments to the "Proposed amendment of Regulations made under Section 70 of the Short-term Insurance Act" as issued by the National Treasury for public comment on the 9th December 2016.

The comments below follow the numbering and headings of the National Treasury document.

Note: Given the limited time allowed for comment, the FIA has not been able to fully unpack the implications of the proposed caps on binder fees in the Assistance Business market.

SCHEDULE.

2 (f) – definition of Services as intermediary.
Noted that it is intended to align this definition to that as appears in the FAIS Act once all RDR changes have been made; we trust that this will include the proposal that Premium Collection should be regarded as an "Outsourced" service if this is decided. We would mention that despite the exclusion of "policy data administration services", the industry finds sections of the definition unclear particularly with regards the meaning behind use of the words "directed towards". This definition requires absolute clarity in order to differentiate "services as intermediary" from other services performed by a broker.

It would be deemed essential to define "advice" for the sake of clarity in the context of "product specific" advice (as specifically related to the policy) and "general" advice (such as comparative product advice, personal recommendations, risk management and professional advice) per the definition in the FAIS Act as provided by the independent intermediary, as the term "advice" is used throughout the regulations, PPR, RDR and FAIS CoBR.

We would recommend that the definitions include clarity on the intention of the various tranches of remuneration being commission, client and insurer fees.

2(f)(b)(iii) Insert the high-lighted words "***directed towards*** receiving, submitting or processing claims under, or of…" The actions comprising the processing of claims fall within the binder domain (or outsource service if no claims settlement mandate is held). This point is also taken up in terms of the PPR Chapter 7, Rule 17.4.3 where it states that receipt of a claim by an intermediary is deemed to be receipt by the insurer, a point which we do not concur with.

2(f)(b)(iv) Insert the high-lighted words "providing administration services ***towards entering into*** other than policy data administration…" Clarity is required on what is meant and / or intended by "other than policy data administration services"?

Remuneration

In the absence of evidence of any in-depth studies and findings of prevailing remuneration models we submit that it is irrational to view the remuneration of the numerous activities performed by an independent intermediary and non-mandated intermediary in the context of Binding Authorities piecemeal and that this exercise should be undertaken looking at the principle holistically and allowing for proportionality of the different types and sizes of intermediary models and customer portfolio's. By doing this it will create a climate of business certainty for all stakeholders and a more settled trading environment.

We reiterate our previous submissions in that we do not support the capping of outsource / binder fees and question the logic and fairness behind this as the underlying principle of this form of outsourcing as stated in 5.8(1) states that "An insurer may pay a binder holder a fee for the services rendered under the binder agreement, ***which fee must be reasonably commensurate with the actual costs incurred*** by the binder holder associated with rendering the services under the binder agreement, ***with allowance for reasonable rate of return*** for the binder holder".

Capping would mean that no form of proportionality is recognised and that all business models are deemed to be the same. It potentially has the effect that where fees are not commensurate with the actual costs incurred a negative rate of return for the the binder holder could result.

Little regard is given to innovation and efficiencies and the employment and development of human capital skills. The loser will undoubtedly be the customer, where service delivery standards will become mediocre. The potential loss of a large number of jobs in the binder and outsource functions – and the effect of these losses on emplooyees and their dependants at a time when the national economy can least afford retrenchments – must also be considered. In addition the capital employed in setting up the infrastructure to manage the functions will have to be written off at great cost to FIA members and other industry stakeholders.

There has been no substantiation of where / how customers have been negatively affected by the fee structures where binder and outsource models have been deployed. To the contrary most customers have enjoyed the benefits of an efficient delivery of product and service (something that is not always available from the insurers) with the freedom to select from a competitive market place and with no barriers to exit an existing policy contract.

We support the principle of fees "being reasonably commensurate with the actual costs incurred with an allowance for a reasonable rate of return". We however question the rationale and fairness

that the capping of fees will apply to "non-mandated intermediaries registered for advice" in terms of Binding Authorities and "independent Intermediaries registered for advice" in terms of Outsourcing contracts; but not to UMAs and Independent Intermediaries / Non-mandated Intermediaries ***not*** registered for advice and ***not*** associated with another NMI / UMA. The fee structures are open-ended, but the same activities are carried out? In addition UMAs are entitled to receive profit shares in addition to fees – this to our minds creates more of a conflict of interest than NMI binder fees, in particular when it comes to impartiality of claims settlements.

We furthermore question the rationale and require detailed facts as to what informs the proposed capped percentages and also the "fairness" thereof, as it is known to both insurers and binder holders that the insurers will not be able to carry out these functions for the stated percentages.

We refer to *3.3 (c): Non-life (short-term) insurance* of the RDR Status update 2016 (third and fourth paragraphs of page 33) which refers to the FSB undertaking "consultation with insurers and intermediaries, carrying out technical work to determine the types of activities for which intermediaries are currently remunerated." "The framework will then be used as a basis to determine how and by whom intermediaries should be remunerated for each of the identified services."

The FIA and to our knowledge our members have not been involved in the in-depth exercise proposed, apart from individual presentations made by three members, despite comments made on page 34 referring to the preliminary key findings. The section is concluded with "this technical work will continue and will be expanded to the long-term sector". This supports our view that the remuneration regimen should be addressed in its entirety and not piecemeal and only once the underlying technical work project has been completed enabling an informed and constructive approach.

To make our position clear we strongly disagree that just one segment of broker activities is singled out for limitation before the whole intermediary model is properly considered and understood particularly that an analysis of all activities and associated remuneration principles and benchmarks are established.

We request that the Phase 1 restrictions on remuneration be deferred until completion of this exercise and that the FIA is actively involved in this study.

PART 5A LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY

At the time of reviewing remuneration, cognisance should be given to reviewing the current caps on commission to take into account the "low premium models" where the economies of scale do not encourage an independent intermediary to provide advice (or at best provide advice on a very

limited scale) due to the level of commission being insufficient relative to the costs of providing services as intermediary. The other pertinent factor when reviewing remuneration is to consider that since the commission caps were introduced many years ago the very competitive market has seen a fall in the rate percent applied to premiums charged to customers, leading to a reduction in commissions paid in real terms because the cap has remained unadjusted.

We refer to your comment at the regulatory workshop that recommendations in the current round of comments would be welcome regarding an adjustment to the commission caps however we feel this needs to be done as part of the complete intermediary activity analysis and remuneration benchmarking exercise in conjunction with other proposed changes to the definition of services as intermediary for which commission is paid.

PART 5B LIMITATION ON REMUNERATION FOR OUTSOURCING

Definition – policy data administration services.

(a) Clarity is sought on what is intended by "complete integration" and in particular with reference to the number, different types of, and ever-changing information technology platforms that are available for the transfer of data.
(b) We question the rationale behind "complete integration and continuous access" for the outsourced model; but 24 hour transfer of data where this is an "incidental" activity under the binder agreement.
(c) Insert the high-lighted words, "enables the insurer to have continuous, ***on demand***, access"
(d) Clarity is required as to whether this definition includes policy issuance and despatch to policyholder or intermediary?

5.7 (2) should refer to (1) and not (a).

The 2% referred to is subjective and uninformed and does not take into account on the one hand the simplicity of certain policy administration portfolios and on the other the complexity of administration of larger portfolios. The RDR Status Update states that the percentage is still under consideration and we seek clarity on this together with the detail of what has informed this percentage, which is neither market related nor representative of the actual costs involved.

The rationale behind the 2% which is proposed for the "enter into, vary or renew function" which includes all incidental functions including policy data administration, versus the 2% proposed for pure policy data administration without any additional functions is questioned?

We are concerned that should capping apply the industry will experience the same potential remuneration effect by premiums and hence premium-related fees will not keep up with inflation.

Remuneration that may be offered or provided to a binder holder

5.8.(2) "Table"

We understand that the proposed percentages are under review and request the underlying principles and detail utilised to determine these percentages be advised.

5.8 (3) - what is regulation 3.21(2)? Suggest that this should refer to 5.8 (2). We recommend that the same principle for the approval of Binder fees to be paid in excess of the caps should also apply for Outsourced Policy Administration activities.

5.10 (e) – request that the intention of "in writing" be clearly defined so as to confirm inclusion of ***the Electronic Communications Act and any other relevant medium*.**

A reasonable implementation timeline will need to be allowed for completion of this exercise due to the high volumes per of policies affected and will take at least one full annual cycle to be completed.

PART 6

6 (a) Definition of Associate.

This definition of associate does not take into account the intricate nature of certain business structures that operate independently of each other with no conflict of interest. This could be particularly inherent in large group structures where potential conflicts can be identified and mitigated by the appropriate disclosures to the FSB? The current FAIS and TCF regimens should adequately mitigate any potential conflicts.

We do not recommend that changes be made to the current definition which then keeps it consistent and in alignment with that of the definition in the FAIS Act and avoids any confusion.

6 (d) Definition of "incidental" – we submit that the intention and application of this definition needs to be reviewed as "incidental (meaning having a minor role/not essential) means any activity that is necessary or expedient…" is a contradiction in terms and for example, the policy issuance and despatch which may be deemed to incidental is anything but that. Perhaps "Ancillary services" describes this better.

We also request that a cost activity exercise be carried out in order to calculate the accurate costing of "incidental" activities versus that of the act of "enter into".

6.2.(1) Commercial (refer to Annexure B: FIA FSB Proposal ZZ Commercial Binders FIA comments to FSB Feb 2017)

(1A).This conflicts with RDR Status Update page 9 foot-note 8 which states that the FSB will carry out further work and consultation on this issue.

At the FSB workshop on 14 February 2017 it was stated that "no compelling reasons had been submitted to enable the FSB to reconsider the proposal".
There has been no feedback on the presentations made to the FSB by the industry motivating for the continuation of commercial binders, nor to the attached paper sent to the FSB on 22 July 2016. An updated version (Annexure B) is attached for consideration and debate.

In view of the reasons given in the RDR Status update 2015 for the proposal not to allow commercial binders, we find it mystifying to understand how this exclusion applies to a non-mandated intermediary registered to give advice –which implies that a non-mandated intermediary registered for "intermediary services" (no advice) is permitted to have a commercial binder?

(1B). We question the rationale behind the disallowing personal lines binders to non-mandated intermediaries ***who are registered to give advice*** from carrying out functions contemplated in section 48A(1)(b) to (d) of the Act; but by implication allowing intermediaries registered for intermediary services as defined in the FAIS Act to carry out these functions? Are there examples and what the "conflict" is?

We furthermore submit that it is not possible to "enter into, vary or renew" without exercising a level of the "determining" functions in terms of selection of policy wordings, benefits, terms conditions and premium levels. This was envisaged under Annexure B.2 to IL 3/2013 and we enquire whether this still has application?

6.2 (l) (p) – provision of data.
Whilst we support the transfer of relevant data and have been an active participant in the Data workgroup we do not believe that the 24 hour requirement can be achieved within the timeframes set out in the proposed amendments.

This should align with the FSB/Industry Data Work Group outcomes with particular reference to the timelines for transitional and final timelines. How can the effective date in the proposed regulations be 1 May 2017 for new contracts and 1 January 2018 for existing contracts when the results of the work group cannot see practical implementation of same prior to 1 January 2019 for personal and 1 January 2020 for commercial, albeit that transitional actions will be proposed?

Part 7 Title and Commencement
7.2 (a) should the reference to Part 3 not be to Part 5?
7.2 (b) Implementation for Data transfer - refer comments in 6.2 (l)(p)

ABOUT THE FIA

The FIA represents, protects, promotes and furthers the common interests of its members, South Africa's risk and financial advisors. FIA members benefit from the support of an influential organisation with the necessary stature and legitimacy to represent their interests at the highest level, including at the regulators, industry bodies and product suppliers.

All members of the FIA are authorised financial services providers or representatives of such providers. Members must adhere to all the requirements prescribed by the FAIS Act and its regulations. In addition, members are bound by the FIA Code of Conduct, which further aligns the organisation with the financial services regulatory landscape.

The FIA enjoys a large and steady national membership comprising financial services intermediaries who cover the broad spectrum of financial planning. We represent 2000 FSPs and 12500 licensed employee benefits consultants, financial advisors, medical schemes brokers and short term insurance brokers throughout Southern Africa. To find out more about the FIA visit www.fia.org.za.